REMARKS/ARGUMENTS

Favorable reconsideration of this application, as amended in light of the following remarks, is respectfully requested.

Claims 1, 3-13 and 15-24 are pending in this application. Claim 11 is amended, support for which is found in the originally filed disclosure, including the original claims and the specification at least at page 3, lines 4-10 and the drawings at least in Fig. 1. Therefore, it is respectfully submitted no new matter is added.

In the outstanding Office Action, Claims 11-16 were rejected under 35 U.S.C. §101; Claims 1, 3-13, 15-20 and 22-24 were rejected under 35 U.S.C. §103(a) as unpatentable over U.S. 6,529,506 (Yamamoto) in view of U.S. 6,414,960 (Kuhn); and Claim 21 was rejected under 35 U.S.C. §103(a) as unpatentable over Yamamoto and Kuhn in view of U.S. 6,446,037 (Fielder).

Initially, as to the rejection under 35 U.S.C. §101, although applicant respectfully disagrees with the rejection, Claim 11 is amended to recite, *inter alia*, a processor to expedite prosecution of this application. Therefore, it is respectfully submitted Claim 11 (and any claim depending therefrom) cannot be interpreted as software *per se* and the rejection under 35 U.S.C. §101 is overcome and should be withdrawn.

Claim 1 recites:

> A network interface device connectable to a network, the device being arranged to receive digital audio data representing an audio signal and to launch data packets representing the digital audio data onto the network, the device comprising:
> an audio level detector having a processor programmed to generate, from audio properties of the digital audio data, audio level data representing an audio level of the audio signal; and
> a packetiser operable:
> to format the digital audio data into audio data packets to be launched onto the network, and
> to format the audio level data into audio level data packets, separate from the audio data packets, to be launched onto the network.

As noted above, Claim 1 recites a device connectable to a network. The device receives digital audio data representing an audio signal and launches data packets representing the digital audio signal onto the network. The device includes an audio level detector and a packetiser. The audio level detector includes a processor to generate, from audio properties of the digital audio data, audio level data representing an audio level of the audio signal. The packetiser formats the digital audio data into packets to be launched onto the network and further formats the audio level data into separate packets to be launched onto the network. It is respectfully submitted the cited references are deficient in disclosing or reasonably suggesting these features.

The Office Action acknowledges Yamamoto fails to disclose or reasonably suggest generating audio level data from audio properties of digital audio data as required by Claim 1.[1] To remedy the above-noted deficiency of Yamamoto, the Office Action relies on Kuhn.

Prior to addressing Kuhn, Applicant would like to first address other deficiencies of Yamamoto. Regarding items 9 to 11 of the Office Action, it should be readily appreciated Yamamoto is directed to embedding watermarks,[2] and is not concerned with, e.g., reducing bandwidth used during monitoring in a networked studio.[3] As a result, the reference does not teach, nor does the Office Action provide reasoning for, Yamamoto providing any solution readily applicable to the above-noted problem.

Upon a closer inspection of Yamamoto, specifically Figs. 1, 4, 6, 17 and 23, every embodiment shown in Yamamoto relates to a network, but it is unambiguously clear the system in Yamamoto mere ***receives packets from a network***. On the other hand, the claimed invention ***receives raw data to turn into packets for a network***, which is a distinguishing feature. As a result, Yamamoto cannot read on the preamble of Claim 1, not can Yamamoto

[1] Office Action, item 1.
[2] Yamamoto, column 1, lines 6-14.
[3] *See*, e.g., the specification at page 2, lines 4-17.

disclose or reasonably suggest the claimed packetiser for launching separate types of packets (i.e. audio data packets and audio level packets) onto a network.

Regarding the reference in the Office Action to Yamamoto column 2, lines 48-53,[4] it is respectfully submitted the teachings therein should be read in the full context of column 2, lines 39-53 and Fig. 19 of Yamamoto. From a full reading, it is clear Yamamoto describes embedding a watermark in content data. It is respectfully submitted there is no technically sensible "embedded watermark" that would ever be transmitted as separate data in a separate packet to the content, as is the case with the presently claimed audio data and audio level data. Therefore, it is respectfully submitted the relied upon passage of Yamamoto does not disclose or reasonably suggest the above-noted claimed features absent impermissible hindsight.

Additionally, Fig. 19 is cited in Yamamoto as background art.[5] It is therefore not recited in combination with the features relied upon in Yamamoto in column 22, lines 56-62, as noted in the last lines of item 10 of the Office Action. These features are directed to a second embodiment of the invention in Yamamoto, not the background art. Consequently, any combination of the background in Yamamoto with the features of the second embodiment of Yamamoto appears to required the benefit of impermissible hindsight because the Office Action does not offer other reasoning.

Further, specifically regarding column 22, lines 56-52 of Yamamoto, the full passage (column 22, lines 35-62) describes data received by the device in Yamamoto as including both audio with embedded information and attribute information, where the latter may optionally be sent "as a data file separated from the audio data ... to be transmitted." First, it is respectfully submitted such an arrangement is ***incompatible*** with the "background" matter

[4] Office Action, item 10.
[5] Yamamoto, Background section.

noted above in column 2, lines 48-53 of Yamamoto, because the "background" matter is directed to embedded data, whereas column 22, lines 56-62 clearly states is different from the attribute information. Therefore, one of these cited passages must be withdrawn from consideration or clarification as to the record is required because of the above-noted inconsistencies.

Second, it is respectfully submitted the relied upon passage does not describe any specific features of the hardware at the distribution (network) end, but rather merely describes a list of possible results to be achieved. As such, Yamamoto does not provide an enabling disclosure of the device used to launch packets onto the network and it is unclear whether the data source is not already in a packetised form.

Finally, the attribute information is described as comprising control informatics.[6] It is respectfully submitted one with ordinary skill in the art at the time of invention would not simply discount this specific teaching of Yamamoto and substitute an entirely different packet payload (which is not disclosed anywhere in Yamamoto) without the benefit of impermissible hindsight.

Therefore, it is respectfully submitted Yamamoto does not recite the features of Claim 1, the hardware in Yamamoto is exclusively related to receiving packets from a network and not to generate/transmit packets, and the only reference to the transmission of packets from the distributor to the network is non-enabling and moreover relates to different auxiliary data. Consequently, it is respectfully submitted Claim 1 is patentable over Yamamoto.

As to the combination of Kuhn, item 12 of the Office Action effectively acknowledges Kuhn does not operate in a similar manner as the claimed invention, noting Kuhn merely describes transmitting audio content when the audio level is above minus 45 dB. Kuhn does not disclose or reasonably suggest a transmission of audio level data in a

[6] Yamamoto, column 22, lines 46-47.

packet separate from (unconditionally transmitted) audio content packets. As such, it is respectfully submitted Kuhn does not remedy the above-noted deficiencies of Yamamoto.

Therefore, it is respectfully submitted Claim 1 (and any claim depending therefrom) is allowable over the combination of Yamamoto and Kuhn.

Although varying in scope and/or directed to different statutory classes, Claims 18-19, 22 and 24 (and any claims depending therefrom) recite features which are also allowable over the combination of Yamamoto and Kuhn for substantially similar reasons as noted above regarding Claim 1. Therefore, it is respectfully submitted the rejection(s) thereto should be withdrawn.

Regarding Claims 11 and 23, Yamamoto at column 22, lines 35-62 and in particular at lines 46-47 merely describes reception of control data, rather than the reception of audio level data as required by Claims 11 and 23. As noted above regarding Claim 1, there does not appear to be any basis in Yamamoto to arbitrarily swap the content of this auxiliary packet data, and since Kuhn does not teach the transmission of audio level data (it is used to control transmission, but is not transmitted), the combination of the two also does not teach the content of these claims.

For these reasons, it is respectfully submitted Claims 11 and 23 (and any claims depending therefrom) are also allowable over the combination of Yamamoto and Kuhn and the rejection(s) thereto should also be withdrawn.

Fielder does not remedy the above-identified deficiencies in Yamamoto and Kuhn with respect to the above claims. Therefore, it is respectfully submitted the claims are in condition for allowance.

Consequently, in light of the above comments, it is respectfully submitted this application is in condition for allowance. Should the examiner disagree, the examiner is

encouraged to contact the undersigned to discuss any remaining issues. Otherwise, an early Notice of Allowance is respectfully requested.

Respectfully submitted,

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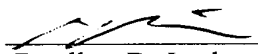

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